

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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ROYAL INDEMNITY COMPANY, )  
Plaintiff, ) C.A. No.  
vs. ) 05-165-JJF  
PEPPER HAMILTON, LLP, )  
W. RODERICK GAGNE, FREED )  
MAXICK & BATTAGLIA CPAs, ) TRACK I  
PC, MCGLADREY & PULLEN, ) VOLUME I  
LLP, MICHAEL ACQUINO, and )  
FREED MAXICK SACHS & MURPHY, )  
P.C., )  
Defendants. )  
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DEPOSITION of GARY HAWTHORNE, taken at 601 South  
Figueroa Street, 16th Floor, Los Angeles,  
California, commencing at 1:29 P.M., Wednesday,  
April 25, 2007, before Ricki Q. Melton, CSR 9400,  
RPR 45429.

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1 GARY HAWTHORNE,  
2 the witness, having been first administered  
3 an oath in accordance with CCP section 2094,  
4 testified as follows:  
5

6 MR. BARNOWSKI: Just for housekeeping 01:32:27  
7 matters, due to plane difficulties, not anyone's 01:32:28  
8 fault, we have had a delay of about three hours 01:32:33  
9 this morning, and I think the parties have all 01:32:36  
10 agreed that the way we're going to make up that 01:32:38  
11 time is starting at 9:00 every morning instead of 01:32:40  
12 9:30 and finishing at 6:00 every afternoon instead 01:32:43  
13 of 5:30, subject to Mr. Hawthorne not getting 01:32:46  
14 overly tired in the afternoon, and he has promised 01:32:49  
15 to let us know if that happens. 01:32:52

16 Is that fair, Mr. Hawthorne? 01:32:54

17 THE WITNESS: That's fair. 01:32:55

18 01:32:55

19 EXAMINATION 01:32:55

20 01:32:55

21 BY MR. BARNOWSKI: 01:32:55

22 Q. Good morning -- good afternoon. 01:32:56

23 You understand you are under oath? 01:32:57

24 A. Yes, I do. 01:32:59

25 Q. Other than scheduling matters, trying to 01:33:00

1 Q. So you are sure that you were No. 2. The 01:44:52  
2 question is whether Perry was a co-No. 2. 01:44:55  
3 Is that fair? 01:44:58  
4 A. That's fair. 01:44:59  
5 Q. Okay. Did you subsequently become the 01:44:59  
6 president and COO of SFC? 01:45:02  
7 A. Yes, I did. 01:45:04  
8 Q. Do you remember when that happened? 01:45:05  
9 A. No, I don't. 01:45:06  
10 Q. Okay. Again, would that have put you 01:45:07  
11 below Andrew Yao but no one else at the company? 01:45:09  
12 A. Correct. 01:45:12  
13 Q. Okay. So at that point in time, were you 01:45:13  
14 the No. 2 at SFC, or is it still that you could 01:45:14  
15 have been co-No. 2 with Perry? 01:45:17  
16 A. Could have been co-No. 2. 01:45:19  
17 Q. You mentioned a second ago that you were 01:45:22  
18 on the board of SFC; is that right? 01:45:24  
19 A. Correct. 01:45:26  
20 Q. Who else was on the board? 01:45:27  
21 A. Perry Turnbull and Andrew Yao. 01:45:28  
22 Q. So just the three of you? 01:45:32  
23 A. Correct. 01:45:34  
24 Q. Okay. And you had a position on the board 01:45:34  
25 too; correct? 01:45:36

1 Q. Okay. Now, Pepper Hamilton and Rod Gagne 03:46:30  
2 you were asked some questions about when the 03:46:35  
3 counsel for Royal was asking you questions. 03:46:38  
4 A. Uh-huh. 03:46:40  
5 Q. And I think you said they were SFC's 03:46:41  
6 primary outside counsel; is that fair? 03:46:45  
7 A. Yes, it is. 03:46:48  
8 Q. How often did you see Rod Gagne? 03:46:48  
9 A. Generally only -- the most I saw Rod is 03:46:53  
10 when we were doing a securitization, and I would 03:47:03  
11 generally -- the paper document signing would be at 03:47:06  
12 Pepper Hamilton's office, and on those occasions 03:47:09  
13 when we have a transaction is when I saw Rod. 03:47:13  
14 Q. So that would be perhaps eight times 03:47:15  
15 overall? 03:47:18  
16 A. Yeah. Maybe sporadically in between. 03:47:19  
17 Q. Okay. 03:47:22  
18 A. But in general, that was probably it be 03:47:23  
19 it. It wasn't real frequent. 03:47:25  
20 Q. So maybe fewer than a dozen times overall? 03:47:26  
21 MR. BARNOWSKI: Object to form. 03:47:29  
22 THE WITNESS: I would say so. 03:47:30  
23 BY MS. AINSLIE: 03:47:31  
24 Q. Okay. You said that you saw him in 03:47:32  
25 connection with the securitizations because you 03:47:35

1 would then go to Pepper Hamilton for some work with 03:47:38  
2 the documents. 03:47:43  
3 A. To do the signing. 03:47:45  
4 Q. And why were you doing the signing? 03:47:46  
5 A. My name was on there on behalf of Student 03:47:48  
6 Finance Corporation and Student Loan Services. 03:47:53  
7 Q. Were you the secretary? 03:47:55  
8 A. Yes. 03:47:57  
9 Q. And did -- 03:47:57  
10 A. I believe that was the capacity. 03:47:59  
11 Q. Okay. Did you ever see Rod Gagne at SFC's 03:48:01  
12 offices? 03:48:08  
13 A. Maybe a couple of times during the course 03:48:13  
14 of my stay there. 03:48:16  
15 Q. Did he ever, to your knowledge, attend any 03:48:17  
16 board meetings, board of directors meetings? 03:48:20  
17 A. No. 03:48:22  
18 Q. Did he ever attend any committee meetings, 03:48:23  
19 to your knowledge? 03:48:25  
20 A. No. 03:48:26  
21 Q. Did Mr. Gagne have any role in deciding 03:48:27  
22 anybody's compensation -- 03:48:31  
23 MR. BARNOWSKI: Object to form. 03:48:32  
24 BY MS. AINSLIE: 03:48:33  
25 Q. -- at SFC? 03:48:33

1 A. Not that I'm aware of. 03:48:34

2 Q. To your knowledge, did he participate in 03:48:35

3 hiring and firing employees at all? 03:48:38

4 MR. BARNOWSKI: Object to form. 03:48:40

5 THE WITNESS: Not to my knowledge, no. 03:48:41

6 BY MS. AINSLIE: 03:48:42

7 Q. To your knowledge, did he tell anybody at 03:48:43

8 SFC what to do? 03:48:45

9 MR. BARNOWSKI: Object to form. 03:48:47

10 THE WITNESS: No, not that I can recall. 03:48:49

11 BY MS. AINSLIE: 03:48:50

12 Q. Is it fair to say, then, that his capacity 03:48:50

13 was to advise and that Mr. Yao and the other 03:48:53

14 officers would then decide whether to accept the 03:48:55

15 advice? 03:48:58

16 MR. BARNOWSKI: Object to form. 03:48:58

17 THE WITNESS: Yes. 03:49:00

18 BY MS. AINSLIE: 03:49:02

19 Q. Okay. You have seen a lot of e-mails in 03:49:02

20 the course of the last few days. 03:49:04

21 Do you recall any on which Mr. Gagne -- 03:49:07

22 from Mr. Gagne? To Mr. Gagne? 03:49:10

23 MR. BARNOWSKI: Object to form. 03:49:13

24 THE WITNESS: I think I may have seen one 03:49:14

25 document that had his e-mail address on it. 03:49:16